IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.A.No.4011 of 2004

K.Subramaniam .. Appellant/Petitioner

versus

Deputy Commercial Tax Officer
Namakkal Town Circle
Namakkal. .. Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 19.11.2004 made in W.P.No.33494 of 2004 on the file of the learned single Judge of this Court.

W.P.No.33494 of 2004:- Petition presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the impugned Assessment order of the Respondent in his proceedings TNGST 3121612/99-2000 dated 21.9.2001 and quash the same.

For appellant : Ms.S.Rita Mary Suganthi

For respondent : Mr.Haja Nazirudeen
Special Government Pleader (Taxes)

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JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This writ appeal is against the order of the learned single Judge dated 19.11.2004 made in W.P.No.33494 of 2004, dismissing the writ petition preferred by the appellant herein to quash the order of assessment passed by the respondent dated 21.9.2001.

2. The writ appellant is an assessee under the provisions of the Tamil Nadu General Sales Tax Act, 1959. He had filed his sales tax returns for the year 1999-2000, claiming exemption in respect of second sale of automobile spare parts. A notice of assessment was issued by the respondent which was received on

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26.2.2001. The assessee, however, did not file any objection to the notice of assessment, which has resulted in an ex parte order of assessment dated 21.9.2001 under which, the respondent adopted best of judgment assessment method and rejected the claim for second sale exemption and further added Rs.1,00,000/- towards ad hoc addition. This resulted in a tax liability of Rs.34,287/-. Apart from this, the respondent also levied penalty of Rs.51,431/- under Section 12(3)(a)(v) of the Tamil Nadu General Sales Tax Act, 1959. Admittedly, the appellant herein did not file a statutory appeal challenging the correctness of the assessment made. Thus, the assessment remained confirmed and recovery proceedings were taken by issuance of an auction notice dated 26.8.2004 under the provisions of the Act to recover a sum of Rs.80,138/-. At this juncture, the appellant herein preferred a writ petition in W.P.No.33494 of 2004 before this Court for the issue of a writ of Certiorari to quash the order of the Assessing Officer on the ground that the order of assessment was not served on the assessee to prefer an appeal on time. By order dated 19.11.2004, this Court dismissed the writ petition on the ground that the assessee did not exhaust the appeal remedy before the statutory authority. Hence, the present appeal.

3. We have gone through the records. A perusal of the order of assessment shows that the best of judgment assessment rejecting the claim for second sale exemption and the addition were made on the assessee's failure to appear before the Assessing Authority to lodge his objection and to substantiate his claim for the grant of second sale exemption.

4. Learned counsel for the appellant submitted that the appellant had closed down his business because of incurring heavy loss. Since the claim was with reference to second sale exemption and the details were already furnished, he was under the bona fide impression that the proceedings would be dropped. However, learned counsel submitted that the assessment order was not served on the appellant to prefer a statutory appeal and he came to know of the assessment only after the recovery proceedings were taken. Considering the same, learned counsel submitted that the assessment made was arbitrary.

5. It may be noted that the best of judgment assessment leading to addition was a result of the assessee's default in not replying to the pre-assessment notice. However, having regard to the fact that the assessee is stated to have closed down the business and hence could not participate in the assessment proceedings, in the interest of justice, in order to enable the assessee to substantiate his claim, the order of the learned single Judge is hereby set aside on terms which are as follows:

(i) The assessee shall deposit a sum of Rs.20,000/- (Rupees twenty thousand only) on or before 14.12.2007 before the respondent herein;

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(ii) The assessee shall appear before the Assessing Authority with all the relevant records and accounts pertaining to the claim for second sales exemption on 17.12.2007 without any default. On such production of the documents and the relevant accounts, the Assessing Authority shall pass orders in accordance with law.

It is hereby made clear that if the appellant herein fails to comply with any one of the conditions put forth above, the order passed by the learned single Judge shall stand revived, confirming the assessment order passed, automatically against the appellant herein.

The writ appeal is disposed of accordingly. Connected W.A.M.P.No.7524 of 2004 is closed.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

The Deputy Commercial Tax Officer
Namakkal Town Circle
Namakkal.

+ 1 cc to the Spl Government Pleader, SR No.70495

+ 1 cc to Mr. AP. Venkataraman, Advocate SR No. 70038

NG(CO)
SR/10.12.2007

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